
COMPARATIVE STATEMENT

OF THE TWO BILLS

FOR THE BETTER GOVERNMENT OF THE

BRITISH POSSESSIONS IN INDIA.

[PRICE ONE SHILLING.]

COMPARATIVE STATEMENT



OF THE

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AND

A
COMPARATIVE STATEMENT
OF THE TWO BILLS,
FOR THE BETTER GOVERNMENT OF THE
BRITISH POSSESSIONS IN INDIA,
BROUGHT INTO PARLIAMENT BY
MR. FOX AND MR. PITT.
WITH
EXPLANATORY OBSERVATIONS.

By R. B. SHERIDAN, Esq.

THE THIRD EDITION.

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MDCCLXXXVIII.

COMPARATIVE STATEMENT

OF THE TWO HUNDRED

FOR THE BETTER GOVERNMENT OF THE

BRITISH POSSESSIONS IN INDIA

REPORT PREPARED BY

MR. FOX AND MR. PITT

IN THE

PARLIAMENT OF GREAT BRITAIN

IN THE YEAR 1834



To J—— M——, Esq.

****, Staffordshire.

DEAR SIR,

YOU request from me, with infinitely more importunity than the thing is worth, a copy of the short comparison between Mr. Fox's India Bill and Mr. Pitt's, which I read in my place in the House of Commons in the last day's debate upon the Declaratory Act. I now send it to you, with a number of notes or observations, which I have been induced to add to it, from a desire of complying more fully with what I conceive to be your object in asking for the paper. I have been led into more length than I intended on the subject, and this must be my apology for not having obeyed your commands sooner.

You will perceive, however, that I have not, in these remarks, paid your judgment so ill a compliment as to have endeavoured to engage your attention by laboured arguments; still less by any attempt at ornament. I have endeavoured merely to be intelligible, and to confine the illustrations I adopt, to facts.

facts. If, upon the whole, you should be of opinion that these papers contain a fair statement of the true meaning of the two Bills, and some just comments upon that meaning, they are at your disposal to be put into any person's hands you please, or to be given to the public, if it is thought worth while to do so.

The comparison itself I wrote in the House of Commons during the debate, from feeling it, I confess, a teasing circumstance to hear gentlemen of the most respectable abilities day after day arguing upon, and drawing parallels between, the provisions of the two Bills, upon which it was perfectly obvious they had not condescended to bestow any very minute degree of attention: and conceiving it to be no very difficult task to reduce the discussion to a plain and concise statement of fact. With regard to Mr. Fox's Bill, I do venture peremptorily to assert, that there never was a legislative measure so little examined, so generally misunderstood, and so confidently misrepresented.

You acknowledge yourself to be one of those who have been in some degree of error on the subject; and you confess that you now begin to see the measure itself, as well as the conduct of those who opposed it, in a new point of view; and that you meet with many who confess the same. Nay, some even of those who were formerly most violent on this topic, have in your hearing acknowledged, you say, (and you seem to expect me to triumph in the intelligence), that " Mr. Pitt's Bill is
" very

“very like, if not quite as bad as, Mr. Fox’s.”—You will forgive my saying, however, that this is a compromise which we never shall accept, even as the overture of returning confidence from those whose good opinion we most regretted to lose. In fact, there is no resemblance between the two Bills in any circumstance, excepting only the little ceremony with which they both treated the Charter of the Company; nor could any person who supported Mr. Fox’s Bill, and still approves the measure, give his countenance to Mr. Pitt’s, with the smallest degree of consistency.—But examine the subject fairly yourself upon the plain ground of fact.—I will not attempt to bias your opinion by any previous argument.

You will receive with this a copy of the other Bill brought in by Mr. Fox, (which you say you never saw) intitled, “A Bill for the better Government of the Territorial Possessions and Dependencies in India.” This Bill accompanied what is usually called “*Mr. Fox’s India Bill*,” but is seldom mentioned, altho’ it formed a very essential part of the plan; and the consideration of it is extremely necessary to the understanding the principle, and main object of the system.

I send you also a copy of Mr. Pitt’s Bill, as it came out of the Committee, when it was re-printed, with its alterations and amendments. In looking it over, I do not desire you to take notice of the ludicrous manner in which it is pieced and patched, and corrected and altered, almost from the beginning to the end, merely to convince you of the sad slovenly style
in

in which the act was framed, but in order that you may compare the spirit and obvious purpose of some of these alterations, with the text as it first stood; by doing which you will be much better enabled to judge of the true meaning of the original Act, than by any thing you can learn from the Declaratory Law.

As to the Declaratory Law itself, and the plea which was made for it,—we seem to be perfectly agreed upon that subject. The papers laid before the House of Commons, certainly contain, as you observe, a complete refutation of all the pretences upon which the sending out the four regiments to India was defended as *a measure of necessity*. And still more strongly do I agree with you in your remarks upon *Declaratory Acts* in general, and upon the nature of this Declaratory Act in particular. It is indeed an alarming and an unfortunate event in the history of Parliament—for it is one that shakes the foundation of that security which all men hope from Law, and of that respect which all men owe to it—to see the Representatives of the people persuaded to intercept the ordinary course of justice, to assume themselves a judicial character, and, upon the suggestion of the King's Ministers, to determine a question of property, in favour of the servants of the Crown, against the claims of the subject!

Nor can our apprehensions of the consequences of this precedent be diminished, by reflecting upon the manner in which the measure was carried thro' the House of Lords; by
reflecting

reflecting, that the supreme court of judicature in this country should have been induced by any influence or by any eloquence, or upon any plea of necessity, pretended or real, to decide—with unparalleled precipitation,—upon a construction of law—in the absence of the Judges of the land, and without granting a hearing to the parties interested in their decision!

Yet possibly you will be surprised when I add, that it is *because* I perfectly and cordially agree with you in your observations upon these proceedings, that I do not so readily adopt the conclusion you have drawn with regard to the advantage which “the ex-party” (I use your own phrase) is supposed to have obtained in consequence of the weak conduct of the Administration in this business.

If this party,—whose general principles, fidelity of attachment, and openness of conduct, you own you respect—but own it with the splenetic reluctance of one who has been in vain endeavouring to look for system, union, or plain dealing elsewhere—If this party had no other object but to retort popular invectives, to detect the sinister views of political adversaries, to lessen the confidence of Parliament in their measures, or to shake the opinion of their consequence in another quarter, there undoubtedly was cause for considerable triumph in the late events:—and of still fairer triumph, perhaps, in the opportunity afforded of vindicating their own characters under circumstances of great advantage, and upon

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grounds

grounds the most embarrassing to their opponents. But understanding, as I trust I do, the terms and conditions upon which alone that party will ever seek to obtain, or consent to hold, ministerial situations in this country, I never shall admit that their cause can be essentially advanced by any legislative measure which tends to lower the House of Commons in the public estimation, and to deprive Parliament of the respect and confidence of the country.

Upon such occasions, whatever advantage this or that set of men may gain in debate, or in public opinion,—*Their's* only is the triumph, who love not the popular part of our Constitution, whose credit and whose principles prosper in the abasement of all popular character, and who would at any time be content to participate in the reproach of an odious measure, provided it reflected superior disgrace on Parliament, as the instrument of effecting it.—But I am getting upon ground which may lead us from the subject I wish to press to your more immediate attention.—I shall therefore only add, that I am,

With great truth and regard,

Your sincere,

And obedient servant,

RICHARD BRINSLEY SHERIDAN.

Bruton-street,
March 24th, 1788.

COPY

COPY of a Paper read by Mr. Sheridan in
the HOUSE OF COMMONS on *Friday* the
14th Day of *March*, 1788.

THE PROFESSED OBJECT of the Two Bills for the better Government of the British Possessions in India, brought into Parliament, the one by Mr. FOX, in 1783, and the other by Mr. PITT, in 1784, was to relieve the Natives of that Country from the many evils which they had experienced under the Dominion of, or in consequence of their Connection with, the Government of the Company of the United Merchants trading to the East-Indies. It was assumed by the Framers of both Bills, that this Relief was not to be expected from the Government of the Company, constituted as it then was; and it was admitted by both, that the Patronage and Influence of the Company ought not to be transferred to the Crown.

(A)

MR. FOX's BILL "*discontinued*" the powers and authorities of the Company for the term of four years, and transferred those powers, and no more, or others, for the said term, to seven Directors, named by Parliament, to be by them exercised "*in trust for, and for the benefit of the said Company.*"

MR. PITT's BILL continues the form of the Company's Government, and professes to leave the Patronage under certain conditions, and the Commerce without condition, in the hands of the Company; but places all matters relating to the *Civil* and *Military* Government and *Revenues*, in the hands of six Commissioners, to be nominated and appointed by his Majesty, under the title of "*Commissioners for the Affairs of India;*"

Mr.

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which

which Board of Commissioners is invested with the "superintendence and controul over all the British territorial possessions in the East Indies, and over the affairs of the United Company of Merchants trading thereto."

(B)

Mr. Fox's Bill did not affect to separate the right of nominating and appointing the persons to be entrusted and employed in executing the measures of Government in India, from the right of originating and directing the measures themselves.

Mr. Pitt's Bill denies to his Commissioners, any right of *nominating*, or *appointing* to any office, Civil or Military; but it reserves to them the power of annulling every appointment of the Company, in a right of *recalling* every person, Civil or Military, in the Company's service; as well as an exclusive right to censure or approve, suspend or reward, according to their judgment and discretion.

(C)

Mr. Fox's Bill did not pretend at once to divide the commercial from the political interests, or the trade from the revenues of the Company; and did therefore provide, that nine "Assistant Directors," nominated by Parliament "from among the Proprietors of East India Stock," should form "a Board for the sole purpose of ordering and managing the commerce of the said united Company," under, and subject to the orders and directions of the said Superior Board.

Mr. Pitt's Bill professes to divide the political and commercial interests of the Company between the Board of Controul and the Directors, but denies to the Directors the right to manage, order, or direct their commercial concerns in India, unless their dispatches shall have received the sanction of the signatures of the Members of the Board of Controul; and in case the said Board should directly interfere in the Commerce of the Company, the remedy provided for the Directors is "an appeal to the King in Council," against the decision of his Majesty's Ministers; and "his Majesty's decision, in Council, is final"

Mr.

"final and conclusive." It also gives to the Board of Controul, while it professes to leave the trade of the Company independent, an absolute power over the *territorial revenues* of the Company in India, "the clear profits arising from which, after defraying the charges and expences attending the same," form the principal, if not the sole fund upon which their trade with India is now carried on.

(D)

Mr. Fox's Bill did not pretend to be founded in any respect upon the consent of the Company, nor to produce a system of reform agreeable to, or concerted with, those whose abuse of power it professed to remedy.

Mr. Pitt's Bill was avowedly communicated to the Directors of the Company, and to the Proprietors; its several provisions discussed by them, and many material alterations were made in the plan after it had been brought into Parliament, declaredly for the purpose of according to the suggestions, and granting the explanations required by the Company. Upon this ground the Bill passed; and since that time there is scarce any one right or power which the Company conceived to have been secured to them, which, in the opinion of the Court of Directors, has not been broken in upon by the Board of Controul, — the Commissioners supporting their own construction of the law, against the fruitless expostulations and remonstrances of the Directors.

(E)

Mr. Fox's Bill established no *fourth estate*, nor gave any one power to the Directors therein named, which did not before exist in the Company; but on the contrary, did limit and restrain the said Directors,

Mr. Pitt's Bill *has* established a fourth, or new estate, or department of Government, with powers infinitely exceeding those possessed by the Court of Directors or Court of Proprietors at the time when the

Directors, so appointed by Parliament, in various particulars in which the Company's Directors were not before restrained. the said Board of Controul was established.

(F)

Mr. Fox's Bill, so far from placing the Directors, named by Parliament, above the executive Government of the Country, and out of the reach of its inspection and controul, did expressly and distinctly place them under the same obligation to communicate their transactions to his Majesty's Ministers for the time being, and did expressly and distinctly make them subordinate and amenable to his Majesty's pleasure, and to the directions of his Ministers, in the same manner, and upon the same footing, and "under the same limitations and restrictions," as the Regulating Act of 1773, and the Act of 1781, and various other Acts, had placed the Court of Directors, chosen, and appointed by the Company.

Mr. Pitt's Bill *has expressly repealed* all the provisions in the said Acts, which gave to his Majesty any right, power, or authority, to interfere in any matter or concern of the British Government in India, and has made the Board of Controul wholly *independent* in the exercise of their offices of *the general executive government* of the country; they being neither bound to abide by his Majesty's will and pleasure, or even to communicate with his Majesty upon any one measure or matter relating to India, of any sort whatever.

(G)

Earl Fitzwilliam, and the other Directors under Mr. Fox's Bill, could neither have had transactions with any of the country powers in the East Indies, nor have directed hostilities against, nor have concluded treaties with, any state or power, but subject to the orders of his Majesty; and his Royal will and pleasure, signified to them by the Secretary of State, they were bound by law to obey.

Mr. Dundas, *with any two more Commissioners*, may transact matters of any sort with the country powers; may *treat* with, or *ally* with, or declare *war* against, or make *peace* with all or any of the Powers or Princes of India; may levy *armies* there to any extent, and command the whole *revenues* of all our possessions for their support, without taking his Majesty's pleasure upon any of these subjects in any shape, and without acting in his name, or under his authority; and

Mr.

and these things he may do against the will of the Directors, and without the knowledge of Parliament ; so that in truth, *the present Board of Controul have, under Mr. Pitt's Bill, separated and usurped those* VERY IMPERIAL PREROGATIVES FROM THE CROWN, *which were FALSELY said to have been given to the new Board of Directors under Mr. Fox's Bill.*

(H)

Mr. Fox's Bill placed the whole of the powers taken from the Company in the New Government established *at home*, in order that they might be executed under the inspection and controul of the Legislature and of the public.

Mr. Pitt's Bill, assisted by the explanatory Act of 1786, beside the *new and extraordinary* powers given to the Board of Controul *at home*, has given to the Governors and Presidents *abroad* the most despotic and extravagant authorities :—unlike any thing that could have been supposed to originate in a free state, and utterly irreconcilable to the spirit of the British Constitution ; by virtue of which despotic authority, among other enormities which, under the name of Government, may be committed, the Governor or President of the Council may, upon his single pleasure, *seize and secure* any British subject in India, of whatever rank or situation, and upon the *accusation* only of any one person cause him to be thrown on ship-board, or imprisoned until there shall be “ a convenient opportunity of “ sending him to England,” where, by the same Bill—a new tribunal and proceeding—equally unheard of in the Constitution,—are provided for his trial.

Mr. ~~XX~~

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(I)

Mr. Fox's Bill established no system of *mystery* and *concealment* in the management of affairs, of any sort; but, on the contrary, did expressly provide, that the conduct of the Board, established by that Bill, should be clear and open; that their opinions should "be given in no covert manner," and, that their motives of conduct, as well as their measures, should stand "recorded on their journals, signed with the name of each Director;" thereby making them responsible to Parliament and to their Country, by the best pledge and security for responsibility,—an explicit avowal of their purposes, at the time they resolved on their measures.

Mr. Pitt's Bill has provided a *Secret Committee*, in the Court of Directors, who are bound by a solemn oath, from which the *Board of Controul alone can release them*: and through this Secret Committee, who are bound to obey all orders of that Board, as the servants in India are bound to obey all orders of the Secret Committee, *all the enormous powers and prerogatives* before mentioned, may be exercised, without a possibility, should the Commissioners so please, either that the *King*, the *Company*, or *Parliament*, shall ever hear even of such orders, until they shall have been carried into full effect.

(K)

Mr. Fox's Bill avowed its object clearly and distinctly; and was worded with such plainness and precision, as to leave no room for misconstruction, nor need of explanation, in the minds of any but of those who would not take the trouble to examine it, or who chose to misunderstand it, or who were incapable of understanding any thing.

Mr. Pitt's Bill, in the preamble to all its clauses, professes objects directly contrary to its enactments; and is worded either with such crafty ambiguity, or such contemptuous negligence, that neither those whose interests were to be most affected by it, nor those who have argued most in support of it, have ever been able to agree upon its meaning; and the present Declaratory Law is the fourth subsidiary statute, which, in the space of four years has in vain endeavoured to explain the original Act.

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(L)

Mr. Fox's Bill was a measure of experiment; the term of its duration limited to four years; and during that period the affairs of the Company were placed so immediately and intelligibly under the eye of Parliament, that a permanent and well-digested system for the future government of those valuable possessions might reasonably have been expected from the wisdom of the Legislature, before that term should have been expired. A system that might have restored to the Company all rights and privileges, which consistently with the ends of good Government they could possess, and have provided real and effectual securities to the Constitution, wherever the judgment of Parliament should have found it necessary to add to the power and influence of the Crown.

Mr. Pitt's Bill, and all its explanatory and supplemental Acts, are *perpetual laws*, and profess to be a *final arrangement* for the Government of India; by which means the Company is wholly at the mercy of the Board of Controul, not only with respect to the renewal of *their charter of exclusive trade*, but with respect to their claim of property in the *territorial revenues* in India, as well as in their *corporate capacity*, as Merchants, intitled to "a free trade in common with the rest of the King's subjects," although their monopoly should not be renewed; and in this situation they are placed, in direct violation of the faith of the Legislature, engaged to them for a valuable consideration upon a solemn compact:—while neither against the Board of Controul acting on purposes of exclusive power and ambition, nor against the Crown acting in collusion with the Board of Controul, and covertly directing its measures and its influence, is there any provision made for the danger which may arise to the Constitution.

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OBSER.

OBSERVATIONS.

(A) PATRONAGE.

“ *Patronage in the hands of the Company—*”] The purposes to which the Board of Controul may apply their power, and the connexion of that power with Patronage, is strongly exemplified in their dispute with the Directors, relative to the settlement of the Nabob of Arcot’s debts to individuals, amounting to nearly four millions sterling. The Directors, in pursuance of “ the positive injunctions of Mr. Pitt’s Bill,” conceiving themselves “ indispensably bound to direct an inquiry “ to be instituted into the justice and origin of these debts,” draw up their Orders to the Presidency of Madras accordingly. They soon learn, however, that they have another master stronger than the law; for the Board of Controul compel them to admit the whole of these debts without any such investigation as the law directed. The Directors remonstrate in vain. Contrary to what they declare to be their sense of the trust reposed in them, contrary to what they conceive to be their duty under the law, they are compelled to execute the orders of the Board of Controul, as if they had been grounded on their own judgments and conviction.—The Commissioners further adding—“ that if any creditor shall be found refractory, or be disposed “ to disturb the arrangement *we have suggested*, he shall be dismissed the service, “ and sent home to England.

25th October, 1784.

(Signed)

“ HENRY DUNDAS,
“ MULGRAVE,
“ WALSINGHAM,
“ W. W. GRENVILLE.”

“ *Nominating or Appointing—*”] IT has been urged, that Mr. Pitt’s Bill had the merit of expressly directing a reduction of the establishments in India, and of restricting both the Directors and the Board of Controul from sending out new servants,

vants. Not even a Cadet beyond what was "actually necessary to keep up the proper complement of officers upon the reduced establishment," was to be permitted to sail from England.—No such restriction undoubtedly was imposed upon the Directors to be appointed under Mr. Fox's Bill. Parliament conceived that they had a better security; and the event has shewn that they could not have taken a worse. This cannot be placed in a stronger light than by supposing that Lord Fitzwilliam, and his associates in the new arrangement, had called aloud for checks to be imposed upon them; had solicited to be restrained from the power of dissipating the Company's revenue, and creating a Military Patronage at *their* expence; had taken credit for tying up their own hands in their own Bill; and—within a short time after, while the Company had *six hundred officers* reduced by the Peace establishment in India, had created an opportunity for sending out *eighty six* NEW officers, APPOINTED BY THEMSELVES, at an expence to the Company of 50,000l. per annum in peace, and 86,000l. per annum in war, without a single plea or pretence which would not have been better answered by *sending out the men without the officers!*

A right of recalling every Person.] IN October 1784, the Directors inform the Board of Controul, that they have appointed John Holland, Esq. an old servant of the Company, to succeed to the Government of Fort St. George, upon the death, removal, or resignation of Lord Macartney.

The Board of Controul admit the Directors' *right of appointment*, but remonstrate against the nomination upon certain grounds; giving Mr. Holland, however, due praise, they add, that it is their "wish to enforce to the Directors, the propriety in every appointment, not only of avoiding blameable appointments, but such as may be open to *plausible misrepresentation.*"

The Directors maintain their right, and observe that the Board are interfering in matters "to which their controul professedly does not extend." The Board of Controul withdraw their opposition with saying, "if the reasons which we have assigned do not satisfy the Court of Directors, we have certainly no right to controul their opinion." Mr. Holland, however, is peremptorily informed, that if he sails for India under the Directors' appointment, he will be *recalled* the instant he arrives there.—The dispute ends; and Sir Archibald Campbell, the friend of Mr. DUNDAS, by a due exertion of the avowed *weight of influence*, is appointed in his place!

Censure and applause.] IN July 1785, the Directors reprimanded Colonel Ross, for what they maintained to be an outrageous contempt of their authority. The Board of Controul alter the dispatch, and refuse to let the reprimand stand. The Directors remonstrate, and declare that “ the present occasion appears to them so momentous, and a *submission on their part, so destructive of all order and subordination in India*, that they must take the liberty of informing the Right Honourable Board, that no dispatch can be sent to India which does not contain their (the Directors’) final decision on Lieutenant Colonel Ross.”

The matter is compromised—with a declaration on the part of the Board of Controul, in these words:—“ We trust, however, that by this acquiescence, it will not be understood that we mean to recognize *any power in you to transmit to India, either censure or approbation of the conduct of any servant, Civil or Military*, exclusive of the Controul of THIS BOARD.

(Signed)

“ HENRY DUNDAS,

“ WALSINGHAM,

“ W. W. GRENVILLE,

“ MULGRAVE.”

Suspending and rewarding.] IN July 1787, the Court of Directors disapprove of certain allowances, or gratuities, made to Sir John Dalling by the Government of Fort St. George; and tell their President, that, upon a full examination of the matter, they think *he has acted improperly*. The Board of Controul new model the dispatch, and oblige the Directors to say, that upon *mature consideration* they are *perfectly satisfied*; assuring them, that if they will peruse their *own papers again*, they, (the Board of Controul,) are persuaded “ you will be disposed to alter your opinion even more than we have altered your dispatch.”

The Court of Directors, “ alarmed,” (as they express themselves, in a case of a similar nature respecting Colonel Geils’s allowances,) “ at the Board’s exercising a *power over their purse*, not conceiving it to have been the intention of the Act to give the Board such a power,” remonstrate respectfully upon the occasion, and declare, that “ they have *endeavoured* to adhere to a *system of œconomy* which the condition of their finances require, and the Legislature has thought fit to command, and should be happy to meet the approbation and support of the Right Honourable Board therein. The Act of Parliament,” they add, “ we conceive, meant to vest in your Right Honourable Board, a controuling

“ controuling power, respecting the *great objects* of the government of the Com-
 “ pany’s affairs, and to leave *the liquidation of accounts for services performed*, and
 “ *all such details*, in the Court of Directors.”

The Board of Controul inform them—that they “ continue to be of their
 “ former opinion;—they are at a loss to understand the grounds of objection
 “ to their *right of controul* in this business, as the claims of Sir John Dalling,
 “ though he is now out of your service, are founded upon his right when he
 “ was in your service, and are to be paid out of the *Revenues of India*; and of
 “ course, *your opinions* upon them must be subject to *our revision*.” The Direc-
 “ tors, finding themselves without a remedy, answer,—“ We feel ourselves under
 “ the *necessity of acquiescing* in the determination of your Right Honourable
 “ Board. But we trust upon further consideration, your Right Honourable
 “ Board will not make such allowances a *perpetual charge* upon the Com-
 “ pany.”

With these instances, thus briefly stated, selected from a number of similar
 cases, and relating to the powers exercised by the Board of Controul, with re-
 spect to *civil appointments, censure and applause, reward and punishment, military pro-*
motion, and *the purse* of the Company; will it be credited, that any man should
 have been stout enough to assert in the House of Commons, that “ the *whole*
 “ *business of Patronage* was left *exclusively* in the hands of the Company, and
 “ that the Board of Controul would not even take it if it were offered to
 “ them!!!”

In truth, the question, “ Whether or not the present Board of Controul possess the
 whole, or any share of the Patronage in India?” has lately been placed in a plainer
 light by the unguarded confessions of those who supported the Declaratory Bill,
 than by any thing that could be said by those who opposed it. Some gentlemen
 defined the authority of the Board on this head to be “ a power of circuitous nomina-
 “ tion;” others, “ appointment by the weight of influence;” others, “ the right of au-
 “ thoritative recommendation;” but by whatever name it is called, or however the
 exercise of it may be disclaimed, these facts are plain, 1st, That all the unbounded
 means of Patronage and Protection which the Governor General and the Presidents
 of the different Councils possess, belong to those to whom in reality they owe their
 appointments, and to whom only in fact they owe obedience. 2dly, That the Board
 of Controul are obviously seizing the whole of the Military Patronage into their
 own

own hands, the intention of extinguishing the Company's service being plainly avowed. 3dly, That no person can look for protection to any quarter but to the Board, or think of accepting any appointment against their will, in the civil line.

One distinction, however, is constantly taken upon this subject, namely, that Mr. Pitt's Commissioners do not meddle with the Patronage at home, which it is affirmed would have been at the disposal of Lord Fitzwilliam's Board, under Mr. Fox's Bill. This Patronage, whatever it is, is always magnified, and never explained. As far as it means the nomination of Clerks, and other officers at the India House, it is not an object very much worth dispute: but as far as it relates to contracts, and money laid out in shipping and trade at home, it should not be forgotten, that the management of these matters was not placed in Lord Fitzwilliam's Board, by Mr. Fox's Bill, but in a Board of Assistant Directors, appointed by Parliament from among the then existing Directors or Proprietors of India Stock, for that special purpose. These Assistant Directors, however, being bound to obey the orders of the Superior Board, Lord Fitzwilliam might have commanded their Patronage, and perverted their commercial dealings to his own political purposes—granted—there was certainly no security against so flagrant an abuse of trust, but in the character of the person trusted; and what reason is there to think that the present Board of Controul have no weight of influence with respect to this very Patronage, if they chose to act as they suppose Lord Fitzwilliam would have done? Or, who is there that does not see that the Court of Directors are becoming every day mere instruments in the hands of this Board; and that there can be nothing of exclusive Patronage belonging to them, more than would have belonged to the Assistant Directors under Mr. Fox's Bill? In plain sense, the whole and only difference, in point of Patronage, between the two Boards, is, that by Mr. Fox's Bill it was given directly, and must have been exercised openly; by Mr. Pitt's Bill it is given circuitously, and may be exercised secretly.

(C)

“Appeal to the King.—”] The application to the King in Council, which Mr. Pitt's Bill declares it shall be lawful for the Court of Directors to make, whenever they conceive the orders of the Board not to relate to points connected with the Civil or Military Government and Revenues in India, is a strange mockery, when gravely held out to the Company as a security against encroachment or interference in commercial matters, on the part of the Board of Controul. It proves, however, how perfectly

perfectly distinct, in theory at least, the framers of this Bill considered the Board of Controul, from the general executive government of the country:—the limits of the authority of the Directors are circumscribed within certain bounds, and if they transgress them, or refuse obedience where the law has commanded them to pay it, redress is provided in the common course of law: The law also prescribes limits to the authority and controul of the Commissioners; but it provides no redress should they transgress them. The most flagrant abuse of their trust under their own Bill, would be in any instance to assume the management of the Company's Commerce; yet if they can craftily effect this, they may do it with impunity; and whenever they are opposed, if they can procure the sanction of the Council on their side, that is, fairly speaking, of themselves in a different character—they have the law on their side also!

But there is nothing more curious than to observe the preposterous and degrading office which these zealous advocates for the dignity and prerogatives of the Crown, have provided for the Monarch, were ever such an appeal to be made.—His Majesty, in Council, shall decide, “whether the dispatch, or order, referred to his “Royal judgment, be, or be not, connected with the *Civil* or *Military* Government “and *Revenues* of the territories and possessions in India;” and this decision is to be made upon such statements and information as the parties shall condescend to favour him with, upon subjects wholly removed from the ordinary contemplation of his Majesty's Government. Mr. Dundas asserts, that the measure proposed belongs to *his department exclusively*—being a measure relating to *war, or peace, or negotiation, or revenue*; and, that therefore his *will and pleasure* ought to have been implicitly obeyed. The Directors humbly contend, without presuming to question the *sovereignty* of the Board of Controul, that the measure is of a *Commercial* nature merely.—His Majesty sits the unprincipled umpire between his contending subjects, deciding upon the extent of Imperial prerogatives, in the exercise of which he has neither will nor voice.

But, if any thing further were wanting to shew the fallacy of this pretended security to the rights of the Company, we find it amply made out in the notable device of compelling the *Directors to establish* a *Secret Committee*, to be *solely under the orders of the Board of Controul*. This Secret Committee was accordingly soon employed contrary to the professed purpose of its institution; and it was as soon predicted, that the whole affair of an appeal to the King in Council, might at once be evaded by the Board of Controul directing, through their Secret Agents, as matter connected with

with revenue or negotiation, whatever commercial arrangements they pleased.— But it occurred to no man, that the Board would be so unwary, at least till the system should be more fully established, as to endeavour to adopt a precedent for a right of *direct controul* and *management* over *commercial* matters, without cover or pretence, by means of, or in collusion with, the Secret Committee: yet has this already been the case. The Secret Committee, (to whom, however, no *intentional* ill-conduct is meant to be imputed,) on the 1st of June 1786, assume, in concert with the Board of Controul, powers from which both by law and the nature of their trust, they were equally excluded. They take upon themselves to direct a *purchase of cotton* to be made at Bombay, for exportation to China, and order five ships to receive the cargo; and direct the remittance of a considerable sum from home, to answer the expence, all without the authority or knowledge of the Directors. The Board of Controul approve the measure, and the dispatch, in the following terms, unguardedly called in the House of Commons,—“ *blindly* “ *lending their name in the usual form.*”

“ Whitehall, 2d June, 1786.

“ Approved by the Board with an omission of the words within brackets [], “ beginning at ‘ considering the ’ and ending at ‘ Controul,’ in the fourth paragraph of this draft.

“ W. PITT,

“ HENRY DUNDAS,

“ W. W. GRENVILLE,

“ MULGRAVE.”

The measure itself also was so far from being *universally approved of by the Court of Directors*, when made known to them, as was also unguardedly insinuated, that a very strong Protest against the whole proceeding, was entered upon the records of the Company, in which it was declared to be a transaction “ contrary to the original “ constitution of the Company, and to every subsequent Act of Parliament which “ has passed relative to its affairs; and that if the like power shall be extended to “ other objects, and to other Presidencies, which *it may be*, under the same “ pretext on which it has been assumed and exercised on the present occasion; “ the collective authority of the Court of Directors will be annihilated, the legal mode

" mode of conducting the Company's business set aside, and ANOTHER SYSTEM
 " introduced, illegal in itself, and dangerous in its consequences.

(Signed)

East-India House,
 22d August, 1786.

" JOSEPH SPARKES,
 " RICHARD HALL,
 " JOHN ROBERTS,
 " FRANCIS BARING,
 " GEORGE CUMING,
 " CHARLES MILLS."

It is plain, that no proceeding could be more unwarrantable in all its parts. The Board of Controul gave an illegal sanction to an illegal transaction. And both parties seem to have been surprized into a small neglect of the *spirit* of their oath of office. The Members of the Secret Committee take an oath, that " they will, according to the best of their skill and judgment, faithfully execute the several trusts and powers reposed in them as Members of the Secret Committee, appointed by the Directors of the United Company of Merchants trading to the East Indies." They also swear secrecy to the Board of Controul; but the *trust* required by their oath to the Directors, is clearly to confine themselves to the purposes of their appointment; and those purposes are accurately defined by the Act that authorizes their institution, to be the executing of the *secret orders* and instructions of the Board of Controul, concerning the *levying of war*, or *making of peace*, or *treating or negotiating* with any of the native Princes or States of India. The Board of Controul also swear to execute faithfully the several powers and trusts reposed in them; by the *spirit of which oath* they are unquestionably precluded from circumventing the Court of Directors in the management of their Commerce. Whether the transaction itself was likely to be profitable, or otherwise, to the Company, is nothing to the purpose, the consequences to which the principles and the precedent lead, must be obvious to every one.

" Power over the territorial revenues."] THE Court of Directors, in the last statement of their affairs laid before Parliament, direct the attention of the House of Commons to the two funds from which their resources are to arise, and from which they are to derive the means of extricating themselves from their difficulties. These are, the profits of their trade with India and China; and the surplus of their territorial revenues. The former they state upon a very sanguine calculation of their probable amount, as sufficient, besides providing for the China investment, to

D

pay

pay the debts then engaged to be discharged at home, and the debts proposed to be brought home from India, to which purpose their faith is engaged. The latter, the surplus of their territorial revenue, as the fund upon which their India investment is to depend; and over THIS FUND THE BOARD OF CONTROUL CLAIM AN ABSOLUTE POWER.

(D)

Expostulation and Remonstrances of the Directors.] The differences which have subsisted between the Court of Directors and the Board of Controul, have not been upon *measures*, or upon *matters of opinion*, or upon trivial points; but all of them upon questions of *right*, of *law*, and upon the *nature* and *limits* of their respective *powers*. Such differences, however, will probably no more be heard of. The last ineffectual struggle of the Company appears to have been made. In one dispute they tried in vain to obtain the Minister's countenance to apply to the Representatives of the People to arbitrate between them and the Board of Controul. In another, they requested to be permitted to apply to the King;—this was also refused. In the last, they looked for redress in an appeal to the Courts of Justice; in this they were frustrated by the Legislature being induced to think it proper to decide the point, and *declare* the law against them. Thus circumstanced, shut out from Law, Parliament, and the Throne, it is but reasonable to believe that the Court of Directors will no more be heard of, but as an instrument to serve the ambition, or to screen the misconduct of their masters.

(E) FOURTH ESTATE.

“*New Estate or Department*—”] The purposes and characters of men have been often misrepresented and misunderstood through the efforts and prejudices of party; but it is a most singular circumstance that nearly a whole nation should have been persuaded to understand a Bill passed in the House of Commons, and given to the public in print, in a manner directly contrary to its plain meaning and express provisions; and that even sober and rational men should have joined in the outcry against it, without giving themselves the trouble to examine whether it really was the measure which it was represented to be.

Whatever other faults were found with Mr. Fox's Bill, nothing certainly operated more in the clamour that was raised against it, than a confused notion that
it

it some way or other attacked the prerogatives of the Crown, and aimed to take from the King certain powers and authorities which of right belonged to him. This idea, whether urged by the mob as "*an attempt to take the Crown from the King's head,*" or, in the politer jargon, of a "*fourth estate,*" and "*imperium in imperio,*" was certainly a main ingredient in the delusion which pervaded the country at the last general election. Yet is it utterly impossible for any man of common sense to read the Bill *attentively*, without being puzzled to guess at the ground upon which such a deception could so long have been maintained.

Mr. Fox's Bill enacted in fact nothing new of any sort with respect to the Royal authority; nor did it contain any one thing in derogation of any one prerogative of the Crown. If the existence of *Directors for the management of the affairs of the East India Company* constituted a *fourth estate*, that fourth estate existed before; and this very phrase is to be found in pamphlets written against this very Company twenty years since. If a *parliamentary* nomination of persons to be concerned in the government of India, was an *attack upon the constitution*, the constitution had sustained and survived a similar attack in the regulating Act of 1773, and in the subsequent Bills which repeated those *Parliamentary* appointments. If the employing the Patronage of the Company, without the King's authority, was an *invasion of his prerogative*, it was of a prerogative never heard of; for the Crown had never had the grant of a single office, civil or military, belonging to the service of the East India Company. In fact, so far as the Crown was concerned at all, it acquired, in the right of nominating to the vacant offices in the new commission, a power the King had never possessed before. Whether the *new* Directors for the affairs of India were likely to make a *better government* than the *old*, is not the question; the extraordinary circumstance is, that this Bill, which left the Crown in the full possession of its prerogatives of war, peace, and negotiation in India, should have been represented as *depriving it of its just rights*, and raising a *Parliamentary commission above its authority*; and that Mr. Pitt's Bill, which *actually strips the Throne* of those main ensigns of Imperial authority, should have been universally admitted at least to have the merit of a *due deference to the rights and person of the Sovereign!*

However, when people are pressed to explain what their meaning is—they are compelled to own, that when they speak of a *fourth estate*, and an *avertthrowing of the constitution*, and an *attack upon the prerogative*, they do not mean that all this was done, or attempted by the Bill, but—that these things *might* have come to pass in consequence of it;—because, say they, a great political party having got posses-

sion of the *Patronage* of India for four years, they would instantly have become so strong, that the King could not easily have dismissed them; and so the *prerogative would have been invaded*. This party would also in time, by means of this *Patronage*, have been able to obtain a predominant party in Parliament; and so the *constitution would have been destroyed*. Now, to make any sense of the first objection, it is necessary to assert, as all violent people did, that, although the King should have thought proper to have dismissed the *Duke of Portland's Administration*, and had been equally desirous of changing the *Indian Administration*, yet that Lord Fitzwilliam, and his Board, could have held complete and independent possession of the Government of India for four years, in spite of his Royal wishes, and have applied all the *Patronage* and influence of their situation to the support of the ex-ministers. This is literally what every man meant who meant any thing, or who had any sincere alarm on the subject. That the mere vulgar, or very ignorant people, should have adopted this notion, is not very strange, considering the pains which were taken to circulate it; but that a person of LORD CAMDEN's character, accustomed to consider laws with temper and deliberation, should now again have gravely detailed all this sort of argument in the House of Lords, have warned them against this *fourth estate*, this *imperium in imperio*; asserting, as is reported, "that had his Majesty thought proper, by virtue of his undoubted prerogative, to have dismissed Mr. Fox and his party from his service, we might have seen the *King of Great Britain*, and the *King of Bengal*, contending in Parliament for superiority," is a matter altogether surprising!—it is surprising, because the whole of the idea, if seriously urged, must arise from a perfect misapprehension of the Bill, and be founded upon the false and perverse notion before stated, that the Board appointed by it, was placed out of the reach, and above the controul, of the King's Ministers for the time being. Two gentlemen in the House of Commons, of great ability and character, Mr. SCOTT and Mr. HARDINGE—confessed very candidly that they had been in a mistake with respect to this part of the Bill; they still, however, persisted to argue upon conclusions founded upon acknowledged error.

What is the real case?—Mr. Fox's Bill enacts, "that the *said Directors hereby appointed*, or any three of them, shall have, use, possess, exercise, all and singular the powers and authorities which have been, at any time heretofore, vested in, or lawfully exercised by, the said Directors hereby discontinued, or Proprietors, or by the General Court of Proprietors of the said United Company, and all such farther and other powers and authorities, and *under such directions*, and *subject to such limitations and restrictions, as in this act, or in ANY OTHER ACT*, the provisions whereof ARE NOT HEREBY ALTERED OR REPEALED, are contained for the government

“vernment and management of the said territorial possessions, revenues, and commerce, of the said United Company, or in any wise relative thereto. And further, that in all cases whatsoever, where any act, matter, or thing, is directed to be done or consented to, or any accounts or writings to be signed by the Directors hereby discontinued; *such act, matter, or thing*, shall, from and after the commencement of this act, be *done or consented to*; and such accounts or writings shall be signed by *three of the Directors hereby appointed*.”

Now, in order to understand what the real situation of *the new Directors* would have been, and what the extent of their powers, it should seem that the natural thing was, to examine what *were the directions, limitations, and restrictions*, not expressly repealed, under which they were left? In this case it would have appeared,—that Lord FITZWILLIAM and his Board were bound to communicate to his Majesty’s Ministers for the time being, *an exact copy of all dispatches and letters received from India, or proposed to be sent thither, which should* “ANY WAY RELATE TO the REVENUES, or to the CIVIL and MILITARY affairs and GOVERNMENT of the said United Company.”—That Lord FITZWILLIAM and his Board were bound *to pay DUE OBEDIENCE to, and to be GOVERNED and BOUND by, such INSTRUCTIONS as they should receive FROM HIS MAJESTY, by one of his Majesty’s principal Secretaries of State, IN ALL THEIR CONDUCT and TRANSACTIONS, (and in those of their Governors, Presidents, and Councils respectively,) with the COUNTRY POWERS in the East Indies, and also in regard to the LEVYING WAR and MAKING PEACE.*—That Lord FITZWILLIAM and his Board had no means of using the credit of the East India Company for the relief of the Company’s pressing distresses, “*without the CONSENT and ORDER first had and obtained of the Commissioners of his Majesty’s Treasury for the time being.*”—That Lord FITZWILLIAM and his Board, in making provision for the defence of the possessions in the East Indies, were bound to act “*on the requisition, and under the inspection of the Commissioners of his Majesty’s Navy, and Office of Ordnance.*” Upon the whole, it would have appeared that their Board was placed, in every important matter, under so strong a controul of the Ministers for the time being, and so wholly without the power of acting upon their own judgment or discretion, in all the more important objects of their institution, that no set of men, who were not content from the meanest motives, to hold the appearance of power upon the most abject conditions, could have remained in their Offices a week, with an Administration desirous to get rid of them. Let these plain facts be once understood, let the state of subordination of the new Directors to the King’s Government be fairly examined, and it will be apparent at once,—that without having recourse to a Parliamentary address,—the Duke of Portland’s Administration.

Administration once dismissed, the resignation of Lord Fitzwilliam's Board must have followed instantly ; that is, if it was the object of the advisers of the Crown to change the Indian Government ;—if *otherwise*, undoubtedly Lord Fitzwilliam and his associates were at liberty to continue in a laborious duty, without pay or emolument, and incapacitated from accepting any place of profit from the Crown, and to sacrifice their ease and their time under Ministers with whom they had no bond of union, nor habits of regard, from a desire to do good, and to effect the great purposes of their appointment—the reform of the abuses in India, and the re-establishment of the British character. To execute this trust faithfully, a rigid scrutiny into past misconduct, a severe œconomy in future arrangements, a just, disinterested, and impartial management of Patronage, would have been among the first duties expected from them. While they *so* acted, if it was the King's pleasure, his Ministers, whoever they were, might certainly have *abstained* from the exercise of the decisive controul they possessed over them ; but then, wherein would have consisted the attack on the Prerogative, or the danger to the Constitution ? But supposing a different conduct to have been pursued by the Board ;—that forgetting what they owed to their own characters, as well as to the duties of their station, they had *perverted* the powers of their trust, and had endeavoured to employ them solely to answer party purposes at home ;—the remedy was at hand, and the first application of it must have been effectual.

This being the fact, an objection of a different nature may, no doubt, be instantly made, namely, that as the King was to nominate to *vacancies upon resignation*, the Bill might have been used *not to destroy, but to increase* the power of the Crown ;—the truth is, that it were much to be wished that this objection could be as easily answered as the other. MR. GRENVILLE was the only person connected with the present Administration, who argued the Bill upon this ground, at the time of its passing through the House of Commons. The fair answer, however, is, that there was every security taken against this worst of mischiefs, which the nature of the measure itself, and the urgent necessity which called for it, admitted of. The public had a pledge in the characters of the persons who framed that Bill, in the whole tenor of their political life, and in their recent and honest exertions to reduce the influence of the Crown, that it was not *their intention* at least, to deceive or delude them upon this subject—If these Ministers were displaced, there was the same security in the character of the Indian Board, and in the very principle upon which it had been formed. If *they* too were obliged to abandon their situation, these securities certainly vanished ; and the Crown might, for whatever term remained of the four years, have placed the powers

powers given to the Parliamentary trustees, in the hands of its own creatures. But this could not have been done *secretly* or *silently*—not without serious discussion—not without the attention of the Public being immediately and forcibly drawn to the subject and to the characters and principles of the new Board; no new arrangement could pretend to claim the confidence of a Parliamentary nomination; Parliament must therefore have had the matter before them in a new point of view and have become accessory to the surrender, if they were to be surrendered, of those powers and that Patronage to the Crown, which all parties professed so much to dread to see lodged there.—Against such a conduct in Parliament there is certainly no remedy, nor ever will be.

The only thing like an objection on this head remaining, is, that upon a supposition that his Majesty had been pleased to continue the Duke of Portland's Administration for the term of four years, for which the India Board was appointed, the supposed good understanding between the Ministers and the new India Government, would have given them an opportunity of using the Company's influence and Patronage, to make friends, and to create an interest which might have been of use to them at the end of that term. This undoubtedly *might* have been the case, but not without an abuse of their trust; and against this the public had certainly no security but in the character of the Board. In a comparison, however, of the two Bills, it is obvious to ask,—what security have the public against the same thing now? The means of Patronage and influence to all important purposes were before proved to be equal; and if Mr. Pitt and Mr. Dundas have for their object the attaching a *powerful Indian interest*, both at home and abroad, to *themselves*, who that observes and understands the measures daily pursued, both with regard to the *Directors*, the *Proprietors*, the *Army*, and the *Governments* and *Councils* abroad, can be so duped as not to own, that a very few years more must make *them* as formidable as Indian influence and attachment, so centred and headed, can make any party?

(G)

“ Mr. Dundas, with any two more Commissioners—”] IN the Committee upon Mr. Pitt's Bill, it was moved, that of the *three* Members of the Board of Controul who were empowered to sign dispatches relating to *war, peace, &c.* “ one should be the *Secretary of State*, or the *Chancellor of the Exchequer* for the time being.” This was negatived upon a division, “ *Ayes 7, Noes 92!*” Such was the confidence the House thought this Board entitled to, independently of its connexion with the ostensible Ministers!

(H)

In speaking of Mr. Fox's plan, it is a circumstance generally overlooked, that it consisted of *two* Bills brought into the House of Commons together, tho' *the Bill appointing the new Directors*, only reached the House of Lords. The other—the Bill for the better Government of the Territorial Possessions, contained many excellent regulations for the relief and protection of the natives of India, and many *real* guards against the abuse of power, and the means of corrupt patronage in the hands of our Governors;—it also contained an undoubted testimony that it was not the intention of that Administration to make Parliament a ready asylum for those who might be accused of delinquencies abroad, or to use the influence of their situation to create an Indian interest for their support.

(I) SECRET COMMITTEE.

THE Secret Committee, created by Mr. Pitt's Bill in the Court of Directors, is an instrument of government unlike any thing existing in any other country, or any thing to be found in the history of all past governments. A body of men in authority (the Court of Directors) acting under a delegated trust from their constituents, (the East India Company) take an oath on their election to support the interests and rights of the Company.—These Directors are then bound by law to choose a Secret Committee from among themselves, which Secret Committee are to take an oath to be true to the trust reposed in them by the Directors; but to obey only such orders and directions as they shall receive from the Board of Controul, which orders and directions they swear also never to communicate to the Directors, who appoint them, without the consent of the said Board of Controul.—This Secret Committee have no power of originating or directing any thing to be done of their own authority, still less, by suggestion or instruction from the Directors; all the Governments and Presidencies, however, in India, are bound to pay a faithful obedience to their orders and dispatches, and to answer the same upon the same terms of secrecy, “as if such orders and directions had been issued and transmitted by the Court of Directors of the said United Company.”

If it were worth reasoning or arguing upon, it would be no difficult matter to prove that this crooked system of involved mystery and contradictory duties, could never have been meant for any fair purpose of good government. Facts, however, make reasoning on the subject unnecessary. The institution had scarcely taken place,
with

with the addition of the *oath*, added in the Explanatory Act passed in 1786, before this Committee, appointed for the purpose of issuing the secret instructions of the Board of Controul, relating to matters of *war and peace*, are directed to manage, as a *matter of secrecy*, the *settlement of an old debt* due from the Nabob of Arcot to the Company.

Nothing could be more clearly out of the spirit and meaning of the Act of 1784, than this measure. The Board of Controul had already assumed an arbitrary power of settling the debts due from the Nabob to *individuals*, as *matter connected with revenue*. The Directors conceived they might at least have been permitted to settle *their own* debt, which was their property, and stated as part of their effects to Parliament; but this was discovered to be—*matter connected with negotiation*. The Board of Controul had no power to issue their orders, through the *Secret Committee*, with respect to matters of *revenue*; but with respect to *treaties with native Princes*, they had: accordingly the settling a sufficient security for an old and public debt to the Company, due from a dependent on their Government, was converted into a *negotiation of state*, deemed a matter of *secrecy*, and withdrawn even from the knowledge of those who alone had any title to the debt. The Directors apply to their Counsel; and they are truly informed by Mr. Rous, that “the whole effect of the last Regulating Bill, in constituting the two Boards of Directors and of Commissioners, the one proposing measures, and the other, after representation, finally deciding, will be lost, as far as concerns the Government of Madras, if the intercourse with the Nabob shall be confined to the Secret Department; because this intercourse involves directly, the arrangements respecting the military force, and indirectly, every interest of that settlement.”

The dispute comes before the Court of Proprietors, who resolve, on the 30th of June 1786, “that the construction of the Act of the 24th of his present Majesty, under which the Right Honourable Board of Commissioners for the Affairs of India have claimed to exercise the powers in instances before the Court, is *subversive of the authority of the Court of Directors*, and the *Chartered Rights* of the Company, recognized and confirmed by the said Act; and tends to establish a *Secret System of Government*, highly dangerous to the interests of the Public and the Company.”

It was farther *resolved unanimously*, “that this General Court do return thanks to the Court of Directors for the *firmness* with which they have maintained the rights of the Company against the claims of the Right Honourable Board of Commissioners

“ *Commissioners for the Affairs of India*; and that the spirited Protest of Mr. Samuel Smith, merits the approbation of his constituents.”

Upon this the Court of Directors resolve, that “ it is expedient to apply to the Legislature for a further explanation, and more correct limitation of the powers of the Board of Controul.” At the same time, however, with a very natural caution, they think it prudent to ask *Mr. Pitt's permission* to do so first. Accordingly the Chairman, and Deputy Chairman, are directed to wait on the Chancellor of the Exchequer, and propose the following question: “ If the Court of Directors, with the authority of the General Court of Proprietors, *shall think proper to apply to Parliament to explain the powers of the Board of Controul, with regard to the secret correspondence relative to the country powers of India, will you assist them in their application?*”

Here seems to have been a reasonable case made for a *Declaratory Law*, if (according to *Mr. Scott*,) “ a material difference of opinion between the Company and the Board of Controul is a sufficient ground for one.”

The Chancellor of the Exchequer however, after due deliberation, answers, that “ he cannot agree in the sentiments expressed in the Resolution concerning the conduct of the *Right Honourable Board of Commissioners for the Affairs of India*, and does not see any ground for an application to Parliament on the subject.”

In a Court of Proprietors, these proceedings being reported, it was moved, “ that a Committee be appointed to take into consideration the state of this Company, under the operation and effect of the last Act of the 24th and 26th of George III.” Upon this a ballot was demanded, in which (the refractory conduct of the Court of Directors and Proprietors having created a considerable alarm) a proper weight of influence was exerted, and the question passed in the negative.

Mr. Samuel Smith's testimony on this occasion, as he has been a zealous friend to the present Administration in Parliament, must be admitted to be at least free from party prejudice. He says, in the Protest above alluded to, containing the reasons of his resignation, “ It will be in vain to contend that the *Patronage* is secured to the Company by the Act of Parliament; if the Government is secret, it will be absurd to suppose that the *Patronage will be open*; or that those who have no voice in the measure will have much concern, if any, in the appointments; if they have not, to what evils, so often foreboded as dangerous to this Constitution, will not this
“ *mysterious*

“ *mysterious government of India expose us ? And if this is to be contended as a*
 “ *necessary mode of managing and controuling the affairs of India, it will, in my opi-*
 “ *nion, give rise to a question, whether, under such circumstances of danger to the*
 “ *Constitution, our Indian possessions are worth retaining ?*

“ A public situation, reduced to the mere *mechanism of official obedience*, can
 “ afford but little credit, even by the most rigid discharge of its functions. Cir-
 “ cumscribed as the power of the Court now is, and by the interpretation given to
 “ the clause to which I allude, incapable of acting either with energy or effect, it
 “ *must ere long yield an easy surrender of its remaining rights to the incroachments*
 “ *and vigilance of a more active controul.* Thus circumstanced, the office of a
 “ Director may be the object of obloquy ; and, though liable to a serious respon-
 “ sibility in the case of misconduct in others, is too subordinate to continue the
 “ post either of independence or honour.

“ It is therefore my intention to resign my trust to the Proprietors, conscious
 “ that while I held it, I endeavoured to discharge it to the best of my abilities, and
 “ with an integrity unimpeached.

India-House,
June 13th, 1786.

(Signed)

SAMUEL SMITH, JUN.

In fact, this transaction established the power of the Board of Controul to act thro’
 the *Secret Committee*, UPON ALL MATTERS, and IN ANY MANNER they may think
 proper, without a possibility of check, and with scarce a probability of detection.

(K)

Agree upon its Meaning.] THE Declaratory Law was defended by many, upon
 the ground of its declaring no more power to be in the Board of Controul than
 it was fit and reasonable to give them ; and that to suppose that the original Act
 had given them less, was to admit that Parliament had enacted an absurd and incon-
 sistent law. This argument, altho’ a popular one, and sanctioned—altho’ a popular
 one—by LORD HAWKESBURY, is an intolerably bad argument when applied to
 Parliament, acting in a great measure in their judicial capacity : It is to set up their
 pride against their justice ; and to pique them to commit an act of violence, rather
 than confess an act of folly. Other Members, however, in both Houses of Par-

ment professed that they supported the Declaratory Law, as a true construction of
 Mr. Pitt’s Bill, from a recollection of *their own meaning* at the time they voted

for it. Yet few of these Members agreed with each other, as to the powers they conceived they *had* given to the Board of Controul. LORD CAMDEN having been out of the kingdom when the Act of 1784 passed, professed to have nothing to say to the *intentions* of the Legislature in passing the Act, but to have formed *his* opinion upon "the plain and obvious meaning of the clauses taken collectively." The learned Lord was obliged, however, to admit, that there were many words omitted which were necessary to make out his construction, and many others inserted which directly contradicted it; but this he presumed to have happened through *inadvertency*; and therefore a whole clause coming under the latter description—"nil operatur." A new and most extraordinary mode, the most unlearned man may venture to assert, of interpreting laws affecting the rights and property of the subject!

But the pleasantest ground was taken by the DUKE of RICHMOND. The noble Duke declared he had voted *against* Mr. Pitt's Bill, because he *differed* at the time from those who had introduced it with respect to its meaning. *He* thinking that it *did* actually give those powers to the Board of Controul, which *they* asserted were *not* meant to be given. It now therefore appearing that they had come over to *his* opinion, *consistency* demanded from him to give vigour and efficacy to a law—which justice and policy had convinced him ought never to have existed.

It would certainly be a difficult task to argue on the *intentions* of different Members at the time the Act of 1784 passed, and a very unfair way of arguing with respect to any but those who publicly gave their interpretation of the Bill, during its progress. Mr. BASTARD's quotations from the Minister's former speeches seem to have been generally admitted to have contained a true exposition of the Minister's former meaning; but there is one decisive test easily recurred to, which was very ably argued upon by Mr. POWIS; namely, to compare the Bill in the state in which it was *first* brought into the House by Mr. Pitt, with *that* to which he altered it, after a discussion with the Directors, in the Committee. Here it will decisively appear that many of these very powers which are *now* contended to be given to the Board of Controul, by *construction* and *implication*, were *directly* and *plainly* given in the Bill as it stood on its first reading, and were afterwards withdrawn or modified upon *conference* and *explanation* with those who objected to them, as intrenching on rights which they had not consented to yield.—This evidence is conclusive.

"*Explain the original Act—*"] THERE is no instance, perhaps, wherein the extraordinary spirit in which Mr. Pitt's Bill is worded, appears more plainly than

than in its bold and irregular manner of repealing matters supposed to be inconsistent with the new enactments.

In all the former Acts we find a regard to perspicuity and fair dealing, expressed as in the Act of 21st of the present King. “ And be it further enacted by the authority aforesaid, that *all and every the rights, interests, powers, privileges, and authorities, which are now vested in the said United Company of Merchants of England trading to the East Indies, and which are NOT hereby EXPRESSLY TAKEN AWAY, altered, or varied, shall remain to, and continue in the said Company, in as full and ample a manner, to all intents and purposes whatsoever, as if this Act had never been made.*”

This is the language of laws that mean to be intelligible, and to do justice.

Mr. Pitt's Bill settles the point in a different manner:—“ And be it further enacted, that all such powers and authorities given to, or vested in the Proprietors and Directors of the said United Company, or in any General or Special Court thereof respectively, in, and by any Act of Parliament or Charter, as are *contrary OR REPUGNANT TO THIS ACT, OR ANY THING HEREIN CONTAINED, shall be, and the same are hereby REPEALED; any thing contained in any Act or Charter, or any custom or usage to the contrary notwithstanding.*” Whether under this loose and arrogant mandate, so unlike the temperate precision of a British law upon such a subject, there is any one *right, power, or property* of any sort, left to the Company, may reasonably be doubted; indeed since the construction given to “ THIS ACT,” by the Declaratory Law, it is difficult to imagine any power ever exercised by them, which might not be proved in a court of justice to be *repugnant to something contained in Mr. Pitt's Bill.*

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“ *Mr. Pitt's Bill a perpetual law—*”] IT was proposed, both in the House of Lords and in the House of Commons, to limit the duration of the powers of the Board of Controul to the term for which the Company held their charter of exclusive trade. It is scarcely to be conceived, that if this question were to be fairly argued upon its own ground, when Ministers should be graciously disposed to allow a little time for its discussion, that either Mr. PITT or Lord HAWKESBURY could easily prevail on either House of Parliament to reject it; because such a conduct would be, in fact, to induce the legislature deliberately to violate a solemn compact made between Parliament and a body of merchants, not
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with respect to their charter of *power* and *monopoly*, which being a trust, as all power is, might be resumed upon abuse; but with respect to *estates*, *rights*, and *property*, which no mismanagement could forfeit, and for which a valuable consideration had been paid to the public.

By the Act of the 21st of his present Majesty, the Company's charter of exclusive trade will expire in 1794, upon previous notice from Parliament.—The 4th and 6th clauses of this Act repeat the reservation in favour of the rights and privileges of the Company, independently of their right to the exclusive trade, and stating the consideration paid “for the service of the Crown of England, *entitling them to these advantages*,” conclude in these words:—“Provided always, and it is hereby further enacted, that nothing in the above proviso, or in any proviso in the said Act of the ninth year of the reign of his said late Majesty King William the Third, or in the said charter of the fifth day of September, in the tenth year of his said late Majesty's reign, or in any other act or charter contained, shall extend, or be construed to extend, to *determine the Corporation* of the said United Company of Merchants of England trading to the East Indies; or to *hinder, prevent, or exclude* the said United Company from carrying on AT ALL TIMES *after such determination of the right to the sole, whole, and exclusive trade*, as aforesaid, a FREE TRADE in, to, and from the East Indies, and parts aforesaid, with all, or any part of their *own joint stock* in trade, goods, merchandizes, estate, and effects, IN COMMON with OTHER THE SUBJECTS OF HIS MAJESTY, his heirs and successors, trading in, to, or from those parts.”

After this, to enact a law to place them in their corporate capacity as merchants united to trade “upon their own joint stock and estate,” (without any exclusive right or protection from Government whatever,) under the *perpetual controul* of certain Commissioners *named by the Crown*, to whom they are bound “to communicate all their transactions,” and without whose signature they can issue no one commercial order, is surely a most flagrant and wanton violation of private property, as well as public faith, and indeed of every right that law or charter can be supposed to secure to any one.

With respect to the Company's *claim* on the *territorial revenues*, the breach of faith is the same. The Company paid the public a certain sum upon the last settlement on this subject, and it was enacted, “that all the territorial acquisitions and revenues lately obtained in the East Indies shall remain in the possession of the United Company of Merchants of England trading to the East Indies, for, and during
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“ the term of the exclusive trade granted to the said United Company.” It was stipulated, however, that beside the sum paid, a further proportion of the surplus profits of these revenues should be “ set apart, and applied for *the use of the public,*” with this reserve, “ so long as the Company shall be entitled to the *sole and exclusive* trade.”—21st George III.

Upon these terms the *question of right* between the *public* and the *Company* was *suspended* until the expiration of the charter of monopoly. And the saving clause which had been inserted in all former Acts relating to this point was repeated. Clause 83. “ Provided always, and be it enacted, that nothing herein contained shall extend, or be construed to extend, to prejudice or affect the rights, or the claims of the public, or *the said United Company*, respecting the said territorial acquisitions and revenues.”

The right of the Company under this compact is—not to *the property* of the revenues certainly, but to a *decision* upon the subject on the expiration of their charter of exclusive trade, or to be placed in the same situation with respect to *their claim* in which they stood when they made their bargain. In lieu of this, a *new Claimant* is created by Parliament, being *neither the public* nor the *Company*, to whom the law gives the *perpetual disposal* of these revenues so claimed by the public on one part, and the Company on the other. For it is to be remembered, (granting the Board of Controul to be acting for the Crown) that the King is *not* the representative of the *Public*, with respect to their *property* and *purse*; but that on the contrary the Constitution regards with jealousy, and places no trust in the Crown upon that head; so that the *Public* would be defrauded, although the revenues were to come under the disposal of the *King*. But even that is not the case; for the Board of Controul can appropriate them *without the direction of the Crown*, as well as without the direction of the *Company*, or of Parliament. Parliament therefore breaks its faith to the Company, without doing justice to the Public; and the title and claims of both are extinguished, not in favour of the Crown, but in favour of a FOURTH ESTATE, which acquires the strange and anomalous right either of disposing of the PROPERTY OF INDIVIDUALS, against their consent, or of applying the PROPERTY OF THE STATE without the sanction of Parliament.

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